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REMARKS

Claims 2-18 and 25-69 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

The Examiner has indicated that claims 26-29 and 68 are allowed. Applicant would like to thank the Examiner for that notification.

Claims 17, 18 and 40-53 have been rejected under 35 U.S.C. §112, second paragraph as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. According to the Office Action "[t]he invention discloses that the tape measure is permanently attached to the stationary member." First, while the specification does disclose that the tape measure can be permanently attached to a stationary member, the specification also discloses various methods of positioning the tape measure relative to a stationary member. For example, the tape measure can be attached to the stationary member through a button, and therefore is not permanently attached to the stationary member. Second, Applicant notes Fig. 16, which discloses a tape measure placed on a stationary member. Finally, the Office Action makes reference to an interpretation of claim 17 as having broad language. However, "breadth of a claim is not to be equated with indefiniteness." M.P.E.P. §2173.04. While the language in claim 17 may be broad, the proper place to address breadth of a claim is in a prior art rejection of a claim. Accordingly, claims 17, 18 and 40-53 are believed to be indefinite.

Claims 25, 54-56, 58, 59, 61, 62 and 64 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,344,231 to Martinez. Claim 25 defines a method of measuring and laying out area including, among other things, providing a stationary member having a flat surface adapted to be marked on, fixedly and rotatably attaching an angle and distance device to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape, and forming an accurate template by reliably marking on the stationary member as the angle and distance device is rotated and the tape is extended and retracted to critical features of the area. The prior art of record does not disclose or suggest the above noted features of claim 25. Specifically, Martinez does not disclose an angle and distance device fixedly and rotatably attached to a stationary member. To anticipate a claim, the reference must teach every element of the claim. M.P.E.P. §2131.

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Therefore, Martinez does not anticipate claim 25. Furthermore, claims 54-67 depend from claim 25, and since claim 25 defines unobvious patentable subject matter, claims 54-67 define patentable subject matter. Accordingly, claims 25 and 54-67 are in condition for allowance.

Claims 60 and 63 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Martinez and claim 66 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Martinez in view of Mercier. As discussed above, claim 25 defines unobvious patentable subject matter and claims 60, 63 and 66 depend from claim 25 and therefore also define patentable subject matter.

Claims 17, 40, 42-49 and 53 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Martinez. Claim 17 defines a method of measuring and laying out a template of a room including, among other things, providing a stationary member, providing a tape measure, extending the tape measure to a critical feature of an area in a room to be measured and recording direction and distance information on the stationary member from the tape measure relating to the critical feature. In order to establish a *prima facie* case of obviousness, three basic criteria must be met, according to the Manual of Patent Examining Procedure, §706.02(j). These three are repeated as follows. Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Secondly, there must be a reasonable expectation of success. Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations.

In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 17. Specifically, Martinez alone or as modified does not disclose recording direction information on a stationary member. While Martinez discloses that an X may be placed on a stationary member, the X does not signify direction and distance information. The X only signifies distance information. Accordingly, claim 17 is in condition for allowance over Martinez.

Furthermore, claims 18 and 40-53 depend from claim 17, and since claim 17 is allowable over Martinez, claims 18 and 40-53 are allowable over Martinez. Furthermore, in regard to claim 53, Martinez does not disclose writing angle information on the stationary

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member signifying an angle of tape measure relative to the stationary member. Accordingly, claims 17, 18 and 40-53 are in condition for allowance over Martinez.

Claim 51 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Martinez in view of Mercier. As discussed above, claim 51 is allowable over Martinez. Accordingly, claim 51 is allowable over a combination of Martinez and Mercier.

Claims 2-4, 7, 9, 11, 12 and 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,269,015 to Barker. In order to establish a *prima facie* case of obviousness, three basic criteria must be met, according to the Manual of Patent Examining Procedure, §706.02(j). These three are repeated as follows. Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Secondly, there must be a reasonable expectation of success. Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations.

Claim 9 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template, wherein the template is formed by markings written directly onto the stationary member. In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 9. Specifically, Barker does not disclose an angle and distance device fixedly and rotatably attached to a stationary member. Accordingly, claim 9 is in condition for allowance. Furthermore, claim 11 depends from claim 9, and since claim 9 defines unobvious patentable subject matter, claim 11 defines unobvious patentable subject matter. Accordingly, claims 9 and 11 are in condition for allowance.

Claim 12 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably

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marking on the stationary member to form an accurate template, wherein the stationary member has a substantially semi-circular configuration. In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 12. Specifically, Barker does not disclose an angle and distance device fixedly and rotatably attached to a stationary member. Accordingly, claim 12 is in condition for allowance. Furthermore, claims 2-8, 10 and 13-15 depend from claim 12, and since claim 12 defines unobvious patentable subject matter, claims 2-8, 10 and 13-15 define unobvious patentable subject matter. Accordingly, claims 2-8, 10 and 12-15 are in condition for allowance.

Claims 5, 6, 8, 10, 13 and 15 have been rejected as being unpatentable over combinations of Barker with Rauch et al., Trevino, Martinez or Mercier. However, as discussed above, Claim 12 defines unobvious patentable subject matter, and therefore, claims 2-8, 10 and 13-15 define unobvious patentable subject matter. Accordingly, claims 5, 6, 8, 10, 13 and 15 are in condition for allowance.

Claim 16 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Barker in view of U.S. Patent No. 6,115,931 to Arcand. Claim 16 defines a measuring and layout device including, among other things, a stationary member and an angle and distance device fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form an accurate template, wherein the tape has a pivotal pointer and a distal end. In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 16. Specifically, neither Barker nor Arcand disclose an angle and distance device fixedly and rotatably attached to a stationary member. Accordingly, claim 16 is in condition for allowance.

Claims 30, 32, 34 and 36-38 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Barker in view of Trevino. Claim 30 defines a measuring and layout device including, among other things, a stationary member, a carrier fixedly and rotatably attached to the stationary member and an extendible tape connected to the carrier, the tape being

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configured to extend from the carrier and including an edge that facilitates reliably marking on the stationary member to form an accurate template. In regard to the third criterion of obviousness, the prior art of record does not disclose or suggest the above noted features of claim 30. Specifically, neither Barker nor Trevino disclose a carrier fixedly and rotatably attached to a stationary member. Accordingly, claim 30 is in condition for allowance. Furthermore, claims 31-39 depend from claim 30, and since claim 30 defines unobvious patentable subject matter, claims 31-39 contain patentable subject matter. Accordingly, claims 30-39 are in condition for allowance.

Claims 31, 33, 35 and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Barker and Trevino and further in view of Rauch et al., Martinez or Arcand. As discussed above, claims 31, 33, 35 and 39 depend from claim 30, and since claim 30 defines unobvious patentable subject matter, claims 31, 33, 35 and 39 define patentable subject matter. Accordingly, claims 31, 33, 35 and 39 are in condition for allowance.

Claims 17, 25, 40, 43, 45, 47, 48, 50, 54-56, 58, 60, 62, 63 and 65 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Barker. Claim 17 defines a method of measuring and laying out a template of a room including, among other things, providing a stationary member, providing a tape measure, extending the tape measure to a critical feature of an area in a room to be measured and recording direction and distance information on the stationary member from the tape measure relating to the critical feature. In order to establish a *prima facie* case of obviousness, three basic criteria must be met, according to the Manual of Patent Examining Procedure, §706.02(j). These three are repeated as follows. Firstly, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Secondly, there must be a reasonable expectation of success. Thirdly, the prior art reference (or references) must teach or suggest all the claim limitations.

The prior art of record does not disclose or suggest the above noted features of claim 17. Specifically, Barker does not disclose recording direction information on a stationary member. Barker discloses drawing an arc on a piece of paper. An arc does not signify either angle or distance information. Accordingly, claim 17 is in condition for allowance over

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Barker. Furthermore, claims 18 and 40-53 depend from claim 17, and since claim 17 is allowable over Barker, claims 18 and 40-53 are allowable over Barker. Accordingly, claims 17, 18 and 40-53 are in condition for allowance over Martinez.

Claim 25 defines a method of measuring and laying out area including, among other things, providing a stationary member having a flat surface adapted to be marked on, fixedly and rotatably attaching an angle and distance device to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape and forming an accurate template by reliably marking on the stationary member as the angle and distance device is rotated and the tape is extended and retracted to critical features of the area. The prior art of record does not disclose or suggest the above noted features of claim 5. Specifically, Barker does not disclose an angle and distance device fixedly and rotatably attached to a stationary member. To anticipate a claim, the reference must teach every element of the claim. M.P.E.P. §2131. Therefore, Barker does not anticipate claim 25. Furthermore, claims 54-67 depend from claim 25, and since claim 25 defines unobvious patentable subject matter, claims 54-67 define patentable subject matter. Accordingly, claims 25 and 54-67 are in condition for allowance.

New claim 69 defines a method of measuring and laying out an area including, among other things, providing a stationary member, rotatably coupling an angle and distance device to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendible tape that can be extended from a central point, forming an accurate template as the angle and distance device is rotated and the tape is rotated and extended and retracted to a plurality of critical features of the area, wherein the step of forming an accurate template includes recording a distance of the tape from the stationary member to each of the plurality of critical features and recording angle information for each distance recording signifying and angle of the tape relative to the stationary member during each distance recording, and wherein the stationary member remains stationary during at least two distance and angle information recordings. The prior art of record does not disclose or suggest the above noted features of claim 69. Accordingly, claim 69 is believed to be in condition for allowance.

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All pending claims 2-18 and 25-69 are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings to Show Changes Made."

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claims 9, 12, 16, 25 and 30 have been amended as follows.

9. (Three Times Amended) A measuring and layout device comprising:
a stationary member having a flat surface adapted to be marked on; and
an angle and distance device fixedly and rotatably attached to the stationary member,
the angle and distance device including a longitudinally and laterally rigid extendable tape that
can be extended from a central point and an edge that facilitates reliably marking on the
stationary member to form an accurate template as the angle and distance device is rotated and
the tape is extended and retracted to critical features of an area;
wherein the template is formed by markings written directly onto the stationary
member.
12. (Three Times Amended) A measuring and layout device comprising:
a stationary member having a flat surface adapted to be marked on; and
an angle and distance device fixedly and rotatably attached to the stationary member,
the angle and distance device including a longitudinally and laterally rigid extendable tape that
can be extended from a central point and an edge that facilitates reliably marking on the
stationary member to form an accurate template as the angle and distance device is rotated and
the tape is extended and retracted to critical features of an area;
wherein the stationary member has a substantially semi-circular configuration.
16. (Three Times Amended) A measuring and layout device comprising:
a stationary member having a flat surface adapted to be marked on; and
an angle and distance device fixedly and rotatably attached to the stationary member,
the angle and distance device including a longitudinally and laterally rigid extendable tape that
can be extended from a central point and an edge that facilitates reliably marking on the
stationary member to form an accurate template as the angle and distance device is rotated and

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the tape is extended and retracted to critical features of an area;
wherein the tape has a pivotal pointer at a distal end.

25. (Three Times Amended) A method of measuring and laying out an area comprising:
providing a stationary member having a flat surface adapted to be marked on;
fixedly and rotatably attaching an angle and distance device to the stationary member,
the angle and distance device including a longitudinally and laterally rigid extendable tape that
can be extended from a central point and an edge that facilitates reliably marking on the
stationary member; and
forming an accurate template by reliably marking on the stationary member
as the angle and distance device is rotated and the tape is extended and retracted to critical
features of the area.

30. (Twice Amended) A measuring and layout device comprising:
a stationary member having a flat surface adapted to be marked upon;
a carrier fixedly and rotatably attached to the stationary member; and
an extendable tape connected to the carrier, the tape being configured to be extended
from the carrier, the tape including an edge that facilitates reliably marking on the stationary
member to form an accurate template as the carrier is rotated and the tape is extended and
retracted to critical features of an area;
wherein the carrier includes a tape extender for mechanically extending the tape,
thereby allowing a single person to create the template while staying in a single central
location.